

**RESOLUTION NO 114-08**

**WEST MIFFLIN SANITARY SEWER MUNICIPAL AUTHORITY  
RESOLUTION APPROVING AN AMENDMENT TO THE  
INTEREST RATE MANAGEMENT PLAN  
AND AUTHORIZING AN AMENDMENT TO THE  
QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT PURSUANT THERETO  
ADOPTED OCTOBER 9, 2008,**

APPROVING AN AMENDMENT TO THE INTEREST RATE MANAGEMENT PLAN; AUTHORIZING AN INTEREST RATE MANAGEMENT AGREEMENT RELATING TO ITS SEWER REVENUE BONDS, SERIES OF 1998; AUTHORIZING THE PROPER OFFICERS OF THE AUTHORITY TO EXECUTE AND DELIVER THE INTEREST RATE MANAGEMENT AGREEMENT; COVENANTING TO PAY THE PERIODIC SCHEDULED PAYMENTS DUE FROM THE AUTHORITY UNDER THE INTEREST RATE MANAGEMENT AGREEMENT; RETAINING AN INDEPENDENT FINANCIAL ADVISOR; AND AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER NECESSARY DOCUMENTS AND THE TAKING OF OTHER NECESSARY ACTIONS IN CONNECTION WITH THE FOREGOING.

WHEREAS, the Authority previously appointed Municipal Government Investors Corporation ("mGIC") as its independent financial advisor (the "Financial Advisor"); said Financial Advisor has prepared an Interest Rate Management Plan (the "Plan") originally in order to better manage the Authority's interest costs relating to the \$28,470,000 portion of the \$28,935,000 outstanding principal amount of its Sewer Revenue Bonds, Series of 1998, (the "Bonds"); and

WHEREAS, the Plan sets forth an analysis of the risks associated with entering into a Swap Agreement, as hereinafter described, as well as criteria for the selection of a Counterparty and the Authority has been advised that it is in its best financial interest to enter into the Swap Agreement that meets the parameters set forth in the Plan; and

WHEREAS, the Plan proposes that the Authority enter into a confirmation relating to an Interest Rate Swap Agreement (the "Original Swap Agreement") and the Authority has been advised by the Financial Advisor that it is in its best financial interest to enter into the Original Swap Agreement with a financial institution with a credit rating

in one of the two highest rating categories of Moody's Investors Service and Standard & Poor's, without regard to qualifiers, numerical or otherwise (the "Counterparty") that meets the parameters set forth in the Plan with respect to the Bonds, which Original Swap Agreement constitutes a Qualified Interest Rate Management Agreement; and

WHEREAS, the Authority entered into the Original Swap Agreement with Wachovia Bank, National Association as Counterparty (the "Counterparty"), pursuant to an ISDA Master Agreement, as supplemented by the Schedule and the Constant Maturity Swap Terms and Conditions and Confirmation thereto; and

WHEREAS, recent conditions in the capital markets resulting from the subprime mortgage turmoil, among other circumstances have created an abnormal situation related to short term tax-exempt interest rates resulting in unexpected negative cash flow to the Authority resulting from the Original Swap Agreement; and

WHEREAS, the Authority desires to amend the Plan (which is attached hereto as Appendix I and made a part hereof) (the "Amended Plan"), authorize the execution and delivery of an additional Swap Agreement (the 2<sup>nd</sup> Swap Agreement") and such other documents as shall be necessary or appropriate in connection therewith in order to enter into an Offsetting Swap (the "Offsetting Swap") for approximately a one year period in order to reduce the negative cash flow exposure of the Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE WEST MIFFLIN SANITARY SEWER MUNICIPAL AUTHORITY AS FOLLOWS:

1. Appointment of Financial Advisor; Adoption of the Amended Interest Rate Management Plan. The Authority hereby reappoints mGIC as its Financial Advisor and hereby adopts and approves the Amended Interest Rate Management Plan prepared and recommended by the Financial Advisor, subject to such modifications from time to time as the General Manager, Chairman of the Board of Directors, the Financial Advisor, Bond Counsel and Solicitor to the Authority shall approve. The Financial Advisor is hereby determined to be independent of the other parties to any transaction that may occur pursuant to the Amended Interest Rate Management Plan. The Authority further reappoints HT Capital Markets, A Division of Northeast Securities, Inc. as its Swap Structuring Agent.

2. Selection of the Counterparty. The Authority hereby determines that its process for the selection of a Counterparty, in order to serve its best financial interest, and to obtain financial terms and conditions which, in the opinion of the Financial Advisor, are fair and reasonable, is to award the 2<sup>nd</sup> Swap Agreement to a Counterparty by a private sale by negotiation. The Financial Advisor is authorized and directed to negotiate with the Counterparty, in order to obtain the 2<sup>nd</sup> Swap Agreement having the form, and containing all the terms and provisions set forth in Appendix II

hereof, which is hereby incorporated by reference.

3. Authorization of the 2nd Swap Agreement and Reverse Constant Maturity Swap Terms and Conditions. In order to manage interest rate risks or costs to the Authority relative to the Bonds, the proper officers of the Authority, as set forth in paragraph 4 below, are hereby authorized to execute and deliver the 2nd Swap Agreement. The substantial form of the 2nd Swap Agreement is hereby approved; provided that: (i) the notional amount subject to the 2nd Swap Agreement shall not exceed the outstanding principal amount of the Bonds to which it relates; (ii) the term of the 2nd Swap Agreement shall end no later than October 31, 2009; (iii) the net effect of the 2<sup>nd</sup> Swap Agreement, when taking into account the Authority's existing Original Swap Agreement, will be that the Authority shall be obligated to pay the monthly average of an amount equal to a 61.515 of the 5 year London Inter-Bank Offered Rate ("LIBOR") Index, multiplied by the notional amount of the Swap, as reflected by the outstanding principal amount of the Bonds, at the time in question, as set forth in the amended Plan, at the times and in the manner set forth in the 2nd Swap Agreement; (iv) the net effect of the 2nd Swap Agreement, when taking into account the Authority's existing Interest Rate Management Agreement, shall obligate the Counterparty to pay an amount equal to the monthly average of the Securities Industry and Financial Markets ("SIFMA") Index, less a fixed spread not to exceed \_\_\_\_% multiplied by the respective notional amount of the Bonds at the times and in the manner set forth in the 2nd Swap Agreement; and (v) both parties may be required to make certain additional payments to the extent required under the 2nd Swap Agreement, however, periodic scheduled payments payable by the Authority pursuant to the 2nd Swap Agreement shall be senior in right and priority of payment to termination payments which may become due under the 2nd Swap Agreement.

The Authority hereby determines that the 2nd Swap Agreement is in the Authority's best financial interest and that it contains financial terms and conditions which the Authority has been advised by the Financial Advisor are fair and reasonable.

In order to manage interest rate risks or costs to the Authority relative to the Bonds and to provide for the provisions that are required to be in the 2<sup>nd</sup> Swap Agreement, the Authority hereby approves the Reverse Constant Maturity Swap ("CMS") Terms and Conditions in substantially the form attached hereto as Appendix III, which is hereby incorporated by reference.

4. Execution and Delivery of Documents. The Chairman, Vice Chairman or Treasurer of the Authority is hereby authorized to execute and deliver, in the name of the Authority and on its behalf, the following documents and to approve the final form and substance thereof, and any amendments or supplements thereto, and to approve the exact notional amount, term and interest rates under the 2nd Swap Agreement (subject to Paragraph 3 above), such approvals to be conclusively evidenced by the execution thereof (including such amendments as may be required to assure compliance with the law), and the Secretary or Assistant Secretary/Treasurer is hereby authorized to affix to all of the following documents the seal of the Authority and to

attest to the same, as necessary:

- (a) The 2nd Swap Agreement; and
- (b) Such other documents, agreements, instruments and certifications, as the executing officers determine to be reasonable and appropriate to provide for the 2nd Swap Agreement as authorized by this Resolution.

Copies of the foregoing documents, together with the other documents relating to the transactions authorized hereby, in final form as executed and delivered by the parties thereof, shall be filed in the official records of the Authority.

The General Manager of the Authority is hereby authorized to accept the final pricing of the 2nd Swap Agreement subject to the requirements of Paragraph 3 which are that the Authority shall be obligated to pay an amount equal to 61.515% of the 5 year LIBOR Index, multiplied by the notional amount of the Swap, as reflected by the outstanding principal amount of the Bonds and the Counterparty shall be obligated to pay an amount equal to the monthly average of the SIFMA Index, less a fixed spread not to exceed \_\_\_\_% multiplied by the respective notional amount of the Bonds at the times and in the manner set forth in the 2nd Swap Agreement, and the General Manager is further authorized to execute any documents evidencing such acceptance.

#### 5. Payments Under the Swap Agreement

Payment obligations (except any termination payments) of the Authority under the 2<sup>nd</sup> Swap Agreement will be general obligations of the Authority. The Authority hereby covenants that it shall include the amount of scheduled payments (except any termination payments) due thereunder for each fiscal year in which such sums are payable in its budget for that year; shall appropriate such amounts from its general revenues to the payment of such scheduled payments; and shall duly and punctually pay or cause to be paid the scheduled payments (except any termination payments) on the dates and places and in the manner stated in the 2nd Swap Agreement according to the true intent and meaning thereof, and for such proper budgeting, appropriation and payment, the general unsecured, unenhanced obligation of the Authority is hereby irrevocably pledged.

The Authority hereby covenants that it shall include any termination payment due under the 2nd Swap Agreement, for which revenues are not otherwise available in the fiscal year in which such termination payment is due, in its budget to be adopted for the fiscal year immediately following the fiscal year in which such termination payment is due, and that it shall appropriate and pay such termination payment from its general revenues promptly, when first available. Nonetheless, to the extent revenues are

available for the payment, in whole or part, of a termination payment in the fiscal year in which such termination payment is due, the Authority shall pay such termination payment promptly from its general revenues.

The Authority covenants with the Counterparty, and proper officers of the Authority are hereby authorized and directed, to withdraw from the General Fund (or from the Sinking Fund hereinafter authorized) and pay to the Counterparty on or before the appropriate payment dates set forth in the 2nd Swap Agreement (or as and when otherwise due by its terms and in order to provide same-day, available funds for timely payment), amounts required to pay the periodic scheduled payments and any other amounts due and owing under the 2nd Swap Agreement.

In the event the Authority determines the same to be necessary or beneficial, and with the consent of the Counterparty, the Authority hereby authorizes to be established, a Sinking Fund for the payment of the periodic scheduled payments and any other amounts due and owing under the 2nd Swap Agreement, with a paying agent, to be named, and further covenants to maintain such Sinking Fund until such obligations are paid in full. Proper officers of the Authority are hereby authorized and directed to contract with any such paying agent for its services in such capacity.

Exhibit 6A to Appendix I hereto sets forth the estimated periodic scheduled payments to be paid and received by the Authority pursuant to the Amended Plan, the Original Swap Agreement and 2<sup>nd</sup> Swap Agreement. Exhibit 7A to Appendix I hereto sets forth the maximum periodic scheduled payments to be paid by the Authority pursuant to the Amended Plan, the Original Swap Agreement and 2<sup>nd</sup> Swap Agreement followed by Exhibit 7B entitled "Maximum Aggregate Net Debt Service" in Appendix I listing the maximum combined obligations of the Authority taking into account the periodic scheduled payments, not including any termination payments, due under the Original Swap Agreement and the 2<sup>nd</sup> Swap Agreement together with the interest portion of the Bonds, assuming that the maximum interest rate on such Bonds is in effect.

6. Process for Selecting Counterparty. The identity of the Counterparty will be determined by a negotiated process conducted by the Financial Advisor in conjunction with the Structuring Agent. The negotiations will ensure that the Authority receives payments from the Counterparty, based upon the lowest percentage of spread deducted from the SIFMA Index, at the time in question that is available in the marketplace. The Structuring Agent and the Financial Advisor will implement rigorous credit standards and credit screening of potential counterparties, with the requirement that any counterparty be rated at the time of award no lower than the two highest rating categories by both Moody's and Standard & Poor's respectively without regard to qualifiers numerical or otherwise. The Authority hereby approves and authorizes the use of this process for selecting a counterparty and awarding the 2<sup>nd</sup> Swap Agreement.

7. Dating of 2nd Swap Agreement. The Swap Agreement and other

documents are presently expected to be dated as of their date of execution within the next sixty (60) days. The Chairman, Vice Chairman, Treasurer and Secretary or Assistant Secretary/Treasurer (for attestation purposes) of the Board of Directors are hereby authorized to approve at a later date, the Swap Agreement and all such other documents, if the award of the Swap Agreement is delayed, due to market conditions or other proper cause, such approval to be conclusively evidenced by the execution of the 2nd Swap Agreement and such other documents by the Chairman, Vice Chairman or Treasurer and Secretary or Assistant Secretary/Treasurer (for attestation purposes) of the Board of Directors.

8. Binding Effect to Covenants and Agreements. All covenants, obligations and agreements of the Authority set forth in this Resolution and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the Authority to the fullest extent authorized or permitted by law, and all such covenants, obligations and agreements shall be binding upon the Authority and its successors from time to time and upon any board or body to which any powers or duties affecting the same shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Authority or the members thereof by the provisions of this Resolution or the documents authorized hereby shall be exercised or performed by such members, officers or other representatives of the Authority as may be required or permitted by law to exercise or perform the same. No covenant, obligation or agreement herein contained in any documents authorized hereby shall be deemed to be a covenant, obligation or agreement of any member, officer, agent or employee of the Authority in his or her individual capacity and neither the members of the Authority nor any officer executing the 2nd Swap Agreement or any other document authorized by this Resolution shall be liable personally thereunder or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

9. Counsel. Wayne D. Gerhold, Esq. is hereby appointed Bond Counsel with respect to the matters set forth in this Resolution and Adams & Foley, LLC and is hereby directed to represent the Authority's interests in these matters.

10. Further Action. Any member of the Authority is hereby authorized and directed to execute such further documents and do such further things as may be necessary or proper to carry out the intent and purpose of this Resolution or any document herein authorized.

11. Repeal of Inconsistent Resolutions. All prior resolutions or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency.

12. Resolution A Contract. This Resolution shall constitute a contract with the Counterparty.

13. Statutory References. All references to specific provisions of statutory law herein contained may be read and interpreted by reference to amended, successor or replacement laws, but only to the extent consistent with the intent and clear meaning of this Resolution. All inconsistencies shall be resolved with recognition of, and in favor of, the rights of the Counterparty whose rights shall not be impaired.

14. Benefited Parties. Nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon, or to give to, any person or corporation, other than the Authority, the Paying Agent for the Bonds, if any, and the Counterparty, any right, remedy or claim under or by reason of this Resolution or any covenant, condition or stipulation hereof; and all of the covenants, stipulations, promises and agreements in this Resolution contained by and on behalf of the Authority shall be for the sole and exclusive benefit of such persons.

15. Severability. If any one or more of the covenants or agreements provided in this Resolution on the part of the Authority to be performed shall for any reason be held to be illegal or invalid or otherwise contrary to law, then such covenant or covenants or agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements, but shall in no way otherwise affect the validity of this Resolution.

16. Counterparts. This Resolution may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; but such counterparts shall constitute but one and the same instrument.

<![if !supportLists]>17. <![endif]>Effective Date. This Resolution shall take effect immediately.

Adopted: October 9, 2008

ATTEST:

**WEST MIFFLIN SANITARY SEWER  
MUNICIPAL AUTHORITY**

By: \_\_\_\_\_

Secretary

Chairman

[SEAL]